

**REMARKS**

Claims 1-25 are pending in this application, of which claims 1, 17 and 19 are independent. Claim 19 has been amended for clarity, but the amendments do not change the scope of the claim and do not add new matter.

Claims 1-25 have been rejected as obvious based on the prior art. Applicants disagree that the claims are obvious and request reconsideration of the rejections in light of the remarks below.

**Rejection Under 35 U.S.C. §103 Based on Caswell in View of Frowein**

Claims 1-12 and 15-25 are rejected under 35 U.S.C. §103 based on Caswell in view of Frowein. Applicants respectfully disagree. Caswell and Frowein do not establish a *prima facie* case of obviousness because there is no motivation to combine the references. Also, Caswell and Frowein do not establish a *prima facie* case of obviousness because the combination of Caswell and Frowein, if the references were properly combinable, would not teach all limitations of the claims.

First, there is no motivation to combine the references. Caswell describes a diagnostic system with diagnostic servers in different domains (note domains 101, 102, 103 and 104 with diagnostic servers 130, 131, 132 and 120, respectively). Multiple diagnostic servers are used to test the entire data access network system because the system spans multiple independently administered domains (see, col. 4, lines 37-41).

In contrast, Frowein describes a method of remotely servicing medical diagnostic equipment. Part of that service involves testing whether the medical diagnostic equipment is connected to an on-line center (see col. 10, lines 15-38). Frowein performs an end-to-end test that is based on a path through the network. Such a system is not applicable in the setting of Caswell. Caswell teaches multiple diagnostic servers, each testing a different domain. Caswell communicates to one of skill in the art that testing the entire network at once is impractical because of the different domains. One of skill in the art would not ignore the teaching of the Caswell and attempt to apply the diagnostic technique of Frowein that is based on a path through the network that could span multiple domains. Therefore, there is no motivation to combine the references.

Second, the references, even if combined, do not teach all limitations of the claims. Considering each of the independent claims individually:

Independent Claim 1

The Examiner concedes that Caswell does not teach “determining with said diagnostic unit fault information of said subscriber terminal from a portion of said communication generated by the subscriber terminal.” There are also other limitations of the claim that are not shown or suggested in Caswell. Claim 1 recites “receiving, through the diagnostic website with the diagnostic unit, a communication from a subscriber experiencing a problem with a network.” The Examiner states that either the diagnostic terminal 106 or diagnostic server 120, 130-132 meets this limitation. However, neither the diagnostic terminal 106 nor the diagnostic servers are described as receiving any communication from a subscriber terminal and therefore do not meet this limitation.

The Examiner cites col. 8, lines 20-21 and 33-35 as demonstrating that the diagnostic unit 106 or diagnostic servers 12, 130-132 receive communications from a subscriber through a website. However, the cited passage describes only that diagnostic terminal 106 includes a web browser. A web browser may be used to *contact* a web site but does not indicate that diagnostic terminal 106 *has* a website.

Nowhere does Caswell describe that diagnostic terminal 106 has a web site through which it may receive a communication from a subscriber. In evaluating what Caswell describes as the operation of the diagnostic terminal and the diagnostic servers, a more relevant passage appears at col. 4, lines 27-35:

The function of the diagnostic terminal 106 is to allow its user or operator to generate a diagnostic request, and to send the diagnostic request to the diagnostic server 120 that is connected to the terminal 106. The function of each of the diagnostic servers (e.g. the diagnostic servers 120 and 130-133) is to launch tests or test routines within the respective control domain, and to pass the diagnostic request to other servers...

This passage shows that Caswell may not be interpreted as teaching communication (whether through a website or otherwise) between subscriber terminal 105 and either diagnostic terminal 106 or diagnostic servers 120 and 130-133.

To the contrary, Caswell describes that the subscriber terminal is in a separate domain from the diagnostic system, which implies that access to the diagnostic system from the subscriber terminal is restricted. The reference states at column 6, line 63 to col. 7, line 9:

“When the system 101 is not functioning properly, the operator of the system 101 can run a number of tests to determine if any component of the system 101 is faulty or malfunctioning. The operator or entity of another control domain, however, can not access system 101 to determine if anything is wrong within the system or not...The subscriber terminal 105 is another independently administered control domain which is referred to as user domain.”

This passage indicates that a subscriber does not access the diagnostic unit of Caswell. This reading of the reference is bolstered by column 8, line 2, which indicates the customer support representative (not a subscriber) generates a diagnostic request through the diagnostic terminal 106. Further, col. 8, line 34 describes that a diagnostic request is sent to diagnostic server 130 from diagnostic terminal 106 -- not from subscriber terminal 105.

Taken in its entirety, the reference describes only that a domain operator uses diagnostic terminal 106 to access diagnostic servers 120 and 130-133, but there is no basis for concluding that a subscriber communicates with either the diagnostic terminal or the diagnostic servers. Therefore, Caswell does not teach “receiving, through the diagnostic website with the diagnostic unit, a communication from a subscriber experiencing a problem with a network.”

Frowein does not teach the limitations of claim 1 missing from Caswell. Frowein does not describe a diagnostic web site. Moreover, Frowein describes a connectivity test. As illustrated in Fig. 7 and the accompanying text, failures are detected when the connection does not succeed. The problems detected by Frowein are manifested by communications from subscribers *not* being received. Therefore, Frowein does not describe the claim limitation “receiving, through the diagnostic website with the diagnostic unit, a communication from a subscriber experiencing a problem with a network,” as is claimed.

Furthermore, because Frowein detects a failure when it does not successfully establish a connection, Frowein cannot reasonably be interpreted as “determining with said diagnostic unit fault information of said subscriber terminal from a portion of said communication generated by the

subscriber terminal,” as claimed. Thus, even if Frowein were properly combinable with Caswell, the combination of the references would not teach all of the limitations of the claim.

Therefore, claim 1 is not obvious and should be allowed.

Claims 2-16 and 22-25 depend from claim 1 and should be allowed for the same reason as explained in connection with claim 1. The dependent claims recite further limitations that provide further distinguishing features over the references.

For example, claims 2, 3 and 6 recite a “fault tolerant protocol stack.” The Examiner acknowledges that Caswell does not teach this feature, but suggests the feature is disclosed at column 10, lines 19-38 of Frowein. Applicants respectfully disagree. At col. 10, lines 25 to 26, the operation of the communications network to relay data from the on-line center to the subscribing station is described. However, no part of the reference indicates that the communications network relays data in event of a fault. Rather, this passage describes the normal operation of the system.

The following paragraph, beginning at col. 10, line 39, further indicates differences with the claim. If the system of Frowein detects a connectivity failure, an appropriate person is contacted to make the repair (col. 8, lines 9-16). Frowein does not describe that the system communicates despite the fact that a failure is detected. Frowein does not describe fault tolerant communication or a fault tolerant protocol stack to operate in the event of a fault. Therefore, claims 2, 3 and 6 further distinguish over the references and should be allowed.

Claim 10 emphasizes a further distinguishing point. Because the subscriber terminal is in communication with the diagnostic unit, it is possible in a system as recited in the claim for the diagnostic unit to emulate a login service to the subscriber. Because the diagnostic terminal and diagnostic servers of Caswell are not in communication with the subscriber terminal, Caswell does not show a configuration that can provide this feature. Frowein does not mention emulation of a login or service. Therefore, claim 10 further distinguishes over the references and should be allowed.

Claim 11 expressly recites that fault information is determined by analyzing the format of data sent by the subscriber. In contrast, Caswell describes only determining fault information by running test routines and Frowlein describes detecting failures when a connection is not successfully established. Thus, claim 11 further distinguishes and should also be allowed.

Claim 23 recites that fault information is determined by emulating the Internet to the subscriber. Caswell describes no connection between the subscriber and the diagnostic unit; Frowein does not describe emulation of the Internet. Therefore, neither reference shows or suggests this limitation, providing a further reason why claim 23 should be allowed.

Independent Claim 17

As to claim 17, the Examiner acknowledges that Caswell does not teach “accepting data from said subscriber in a source protocol inconsistent with a network element protocol,” and then “sending an indication of the data received from the subscriber to the selected network element in a protocol consistent with the network element protocol.” The Examiner equates this limitation to providing a fault tolerant protocol stack. As described above in connection with claims 2, 3 and 6, Caswell and Frowein, whether singly or in combination, do not teach or suggest a fault tolerant protocol stack.

Nor do the references more generally teach or suggest accepting data in a source protocol inconsistent with a network element protocol and then sending data to the selected network element in a protocol consistent with the networked element protocol, as recited in the claim. Caswell teaches using standard HTTP for communication and does not mention an inconsistent protocol. Frowein does not describe a protocol or that the on-line center communicates with other network elements. The reference cannot, therefore, describe that the on-line center communicates with other network elements in different protocols. Therefore, neither describes using a consistent and inconsistent protocol as recited in claim 17.

Further, the references do not teach other limitations of the claims. As described above in connection with claim 1, Caswell does not describe communication between the subscriber and either the diagnostic terminal or diagnostic server. Nonetheless, the Examiner asserts that col. 8, lines 33-47 of Caswell meets this limitation. However, that passage describes processing of a diagnostic request generated in the diagnostic terminal (col. 8, line 34), not communication between a subscriber and a diagnostic unit. Therefore, Caswell does not meet the limitation “receiving, with said diagnostic unit, a communication from a subscriber unable to communicate with the desired network element.”

Nor does Frowein meet this limitation. As described above in connection with claim 1, Frowein describes a system in which a connection between medical diagnostic equipment and an on-line center is tested by trying to form a connection. A problem is detected by the absence of a communication. Therefore, neither reference teaches or describes the limitation of claim 17 that recites: "receiving, with said diagnostic unit, a communication from a subscriber unable to communicate with the desired network element." Accordingly, claim 17 is not obvious and should be allowed.

#### Independent Claim 19

The Examiner makes the same rejection against claim 19 as against claim 17. As described above in connection with claim 12, Caswell and Frowein, whether individually or in combination, do not show or suggest "accepting data from said subscriber in a source protocol inconsistent with a network element protocol of a selected network element," or "establishing a communication link with the subscriber," or "sending an indication of the data received from the subscriber to the selected network element in a protocol consistent with the network element protocol." Therefore, Caswell, even if combined with Frowein, does not show or suggest all limitations of claim 19.

Further, neither Caswell nor Frowein shows or suggests "determining configuration information of said subscriber," as claimed. As described above, Caswell describes diagnostic servers, each running tests within a specific network domain. None of the diagnostic servers is described to run tests in the user domain and there is no teaching or suggestion in the reference that any diagnostic server determines configuration information of a subscriber. Frowein describes isolating communication failures, possibly to a subscribing station (col. 10, lines 42 through 45), but there is otherwise no teaching or suggestion that any part of this action involves determining configuration information of the subscriber.

Therefore, claim 19 is not obvious and should be allowed.

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- 13 -

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Applicant respectfully requests a one month extension of time. A check in the amount of \$120.00 is enclosed to cover the one month extension of time fee associated with this filing. If there is a discrepancy with the fee, the Commissioner is hereby authorized to charge any deficiency to Deposit Account No. 23/2825.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

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